



Certified Labour Law Analyst Sample Material

V-Skills Certifications

**A Government of India
&
Government of NCT Delhi Initiative**

V-Skills



1. FACTORIES ACT, 1948

The Act extends to whole of India including Jammu & Kashmir and covers all manufacturing processes and establishments falling within the definition of 'factory' as defined under Section 2(m) of the Act. Unless otherwise provided it is also applicable to factories belonging to Central/State Governments. (Section 116)

1.1. Important Definitions

Adult

"Adult" means a person who has completed his eighteenth year of age. [Section 2(a)]

Adolescent

"Adolescent" means a person who has completed his fifteenth year of age but has not completed his eighteenth year. [Section 2(b)]

Calendar Year

"Calendar Year" means the period of twelve months beginning with the first day of January in any year. [Section 2(bb)]

Child

"Child" means a person who has not completed his fifteenth year of age. [Section 2(c)]

Competent Person

"Competent Person" in relation to any provision of this Act, means a person or an institution recognized as such by the Chief Inspector for the purposes of carrying out tests, examinations and inspections required to be done in a factory under the provisions of this Act having regard to

- ✓ the qualifications and experience of the person and facilities available at his disposal; or
- ✓ the qualifications and experience of the persons employed in such institution and facilities available therein.

With regard to the conduct of such tests, examinations and inspections and more than one person or institution can be recognized as a competent person in relation to a factory. [Section 2(ca)]

Hazardous Process

"Hazardous Process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents thereof would

- ✓ cause material impairment to the health of the persons engaged in or connected therewith, or
- ✓ result in the pollution of the general environment;

Provided that the State Government may, by notification in the Official Gazette amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule. [Section 2(cb)]

Young Person

“Young Person” means a person who is either a child or an adolescent. [Section 2(d)]

Day

“Day” means under Section 2(e), a period of twenty-four hours beginning at mid-night. [Section 2(e)]

Week

“Week” means a period of seven days beginning at mid-night on Saturday night or such other night as may be approved in writing for a particular area by the Chief Inspector of Factories. [Section 2(f)]

Power

“Power” means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. [Section 2(g)]

Prime Mover

“Prime” Mover means any engine, motor or other appliance which generates or otherwise provides power. [Section 2(h)]

Transmission Machinery

“Transmission” Machinery means any shaft, wheel, drum, pulley, system of pulleys, coupling, clutch, driving belt or other appliance or device by which the motion of a prime-mover is transmitted to or received by any machinery or appliance. [Section 2(i)]

Machinery

The term includes prime-movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied. [Section 2(j)]

Factory

“Factory” includes any premises including the precincts thereof

- ✓ whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; or
- ✓ whereon twenty or more workers are working, or were working on a day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

But does not include a mine subject to the operation of the Mines Act, 1952 or a mobile unit belonging to the armed forces of the Union or a railway running shed, or a hotel, restaurant or eating place. [Section 2(m)]

Explanation I: For computing the number of workers for the purposes of this clause, all the workers in different groups and relays in a day shall be taken into account.

Explanation II: For the purposes of this clause the mere fact that an Electronic Data Processing Unit or a Computer Unit is installed in any premises or part thereof, shall not be construed to make it a factory if no manufacturing process is being carried on in such premises or part thereof.

(i) Essential elements of a factory:

- ✓ There must be a premises.
- ✓ There must be a manufacturing process which is being carried on or is so ordinarily carried on in any part of such a premises.
- ✓ There must be ten or more workers who are/were working in such a premises on any day of the last 12 months where the said manufacturing process is carried on with the aid of power. But where the manufacturing process is carried on without the aid of power, the required number of workers working should be twenty or more.

The following are not covered by the definition of factory:

(i) Railway running sheds, (ii) mines, (iii) mobile units of armed forces, (iv) hotels, eating places or restaurants.

(ii) Meaning of words “premises and precincts”

The word “premises” is a generic term meaning open land or land with building or building alone. The term ‘precincts’ is usually understood as a space enclosed by walls. Expression ‘premises’ including precincts does not necessarily mean that the premises must always have precincts. It merely shows that there may be some premises with precincts and some premises without precincts. The word ‘including is not a term’ restricting the meaning of the word ‘premises’, but is a term which enlarges its scope. All the length of railway line would be phase wise factories (LAB IC 1999 SC 407). Company engaged in construction of railway line is factory. (LAB IC 1999 SC 407).

The Supreme Court in *Ardeshir H. Bhiwandiwalla v. State of Bombay*, AIR 1962 S.C. 29, observed that the legislature had no intention to discriminate between workers engaged in a manufacturing process in a building and those engaged in such a process on an open land and held that the salt works, in which the work done is of conversion of sea water into crystals of salt, come within the meaning of the word ‘premises’.

(iii) Manufacturing process is being carried on or ordinarily so carried on

The word ordinarily came up for interpretation in the case of *Employers Association of Northern India vs. Secretary for Labour U.P. Govt.* The question was whether a sugar factory ceases to be a factory when no manufacturing process is carried on during the off-season. It was observed that the word ‘ordinarily’ used in the definition of factory cannot be interpreted in the sense in which it is used in common parlance. It must be interpreted with reference to the intention and purposes of the Act. Therefore, seasonal factories or factories carrying on intermittent manufacturing process, do not cease to be factories within the meaning of the Act.

(iv) Ten or twenty workers

The third essential content of 'factory' is that ten or more workers are employed in the premises using power and twenty or more workers are employed in the premises not using power.

Where seven workers were employed in a premises where the process of converting paddy into rice by mechanical power was carried on and in the same premises, three persons were temporarily employed for repairs of part of the machinery which had gone out of order but the manufacturing was going on, it was held that since three

temporary persons were workers, consequently there were ten workers working in the 'premises' and the premises is a factory (AIR 1959, AII. 794).

According to explanation to Section 2(m), all the workers in different relays in a day shall be taken into account while computing the number of workers.

Bombay High Court held that the fact that manufacturing activity is carried on in one part of the premises and the rest of the work is carried on in the other part of the premises cannot take the case out of the definition of the word 'factory' which says that manufacturing process can be carried on in any part. The cutting of the woods or converting the wood into planks is essentially a part of the manufacturing activity (Bharati Udyog v. Regional Director ESI Corpn., 1982 Lab. I.C. 1644).

A workshop of Polytechnic Institution registered under the Factories Act imparting technical education and having power generating machines, was carrying on a trade in a systematic and organized manner held, it will come under the definition of factory as defined under Section 2(m) read with Section 2(k) (1981 Lab. I.C. NOC 117).

Manufacturing Process

It means any process for

- ✓ making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise, treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
- ✓ pumping oil, water or sewage or any other substance; or
- ✓ generating, transforming, transmitting power; or
- ✓ composing types for printing, printing by letter-press, lithography, photogravure or other similar process, or book-binding; or
- ✓ constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
- ✓ preserving or storing any article in cold storage. [Section 2(k)]

The definition is quite important and it has been the subject of judicial interpretation in large number of cases:

(i) What is manufacturing process

The definition of manufacturing process is exhaustive. Under the present definition even transporting, washing, cleaning, oiling and packing which do not involve any transformation as such

which is necessary to constitute manufacturing process in its generic sense, are nonetheless treated as manufacturing process. The definition is artificially projected beyond the scope of natural meaning of what the words might convey thus covering very

vide range of activities. Madras High Court in the case of *In re. Seshadrinatha Sarma*, 1966 (2) LLJ 235, held that to constitute a manufacture there should not be essentially some kind of transformation of substance and the article need not become commercially as another and different article from that at which it begins its existence so long as there has been an indisputable transformation of substance by the use of machinery and transformed substance is commercially marketable.

Division Bench of A.P. High Court held that to determine where certain premises is factory, it is necessary that it should carry on manufacturing process and it does not require that the process should end in a substance being manufactured (*Alkali Metals (P) Ltd. v. ESI Corpn.*, 1976 Lab.I.C.186). In another case it was observed that manufacturing process merely refers to particular business carried on and does not necessarily refer to the production of some article. The works of laundry and carpet beating were held to involve manufacturing process. A process employed for purpose of pumping water is manufacturing process. Each of the words in the definition has got independent meaning which itself constitutes manufacturing process.

Following processes have been held to be manufacturing processes:

- ✓ Sun-cured tobacco leaves subjected to processes of moistening, stripping, breaking up, adaption, packing, with a view to transport to company's main factory for their use in manufacturing cigarette (*V.P. Gopala Rao v. Public Prosecutor*, AIR 1970 S.C. 66).
- ✓ The operation of peeling, washing etc., of prawns for putting them in cold storage is a process with a view to the sale or use or disposal of the prawns (*R.E.DSouza v. Krishnan Nair*, 1968 F.J.R. 469).
- ✓ Stitching old gunny bags and making them fit for use.
- ✓ In paper factory, bank as grass packed into bundles manually and dispatched to the factory.
- ✓ Work of garbling of pepper or curing ginger.
- ✓ Process carried out in salt works in converting sea water into salt.
- ✓ Conversion of latex into sheet rubber.
- ✓ A process employed for the purpose of pumping water.
- ✓ The work done on the bangles of cutting grooves in them which later would be filled with colouring, is clearly a stage in ornamentation of the bangle with view to its subsequent use for sale.
- ✓ Preparation of soap in soap works.
- ✓ The making of bidies.

The raw film used in the preparation of movies is an article or a substance and when by the process of tracing or adapting, after the sound are absorbed and the photos imprinted, it is rendered fit to be screened in a cinema theatre, then such a change would come within the meaning of the term treating or adapting any article or substance with a view to its use.

- ✓ Composing is a necessary part of printing process and hence it is a manufacturing process. It cannot be said that the definition should be confined to the process by which impression is created on the paper and to no other process preceding or succeeding the marking of the

impression on the paper to be printed. Everything that is necessary before or after complete process, would be included within the definition of the word 'manufacturing process'. The definition takes in all acts which bring in not only some change in the article or substance but also the act done for the protection and maintenance of such article by packing, oiling, washing, cleaning, etc. (P.Natrajan v. E.S.I. Corporation (1973) 26 FLR 19).

- ✓ Preparation of food and beverages and its sale to members of a club (CCI vs. ESIC, 1992 LAB IC 2029 Bom.).
- ✓ Receiving products in bulk, in packing and packing as per clients requirements (LLJ I 1998 Mad. 406).
- ✓ Construction of railway - use of raw materials like sleepers, bolts, loose rails etc. to adaptation of their use for ultimately for laying down railway line (LAB IC 1999 SC 407; Lal Mohmd. v. Indian Railway Construction Co. Ltd.).

(ii) What is not a manufacturing process

No definite or precise test can be prescribed for determining the question whether a particular process is a manufacturing process. Each case must be judged on its own facts regard being had to the nature of the process employed, the eventual result achieved and the prevailing business and commercial notions of the people. In deciding whether a particular business is a manufacturing process or not, regard must be had to the circumstances of each particular case. To constitute a manufacturing process, there must be some transformation i.e. article must become commercially known as something different from which it acquired its existence.

Following processes are not manufacturing processes:

- ✓ Exhibition of films process.
- ✓ Industrial school or Institute imparting training, producing cloth, not with a view to its sale.
- ✓ Receiving of news from various sources on a reel in a teleprinter of a newspaper office, is not a manufacturing process in as much as news is not the article or substance to which Section 2(k)(i) has referred.
- ✓ Any preliminary packing of raw material for delivering it to the factory (AIR 1969 Mad. 155).
- ✓ Finished goods and packing thereof: F. Hare v. State AIR 1955, 2710.

Worker

“Worker” means a person employed directly or by or through any agency (including a contractor) with or without knowledge of the principal employer, whether for remuneration or not, in any manufacturing process, or in any other kind or work incidental to, or connected with, the manufacturing process or the subject of the manufacturing process but does not include any member of the armed forces of the Union. [Section 2(1)]

The definition contains following ingredients :

- ✓ There should be an ‘employed person’

(a) Meaning of the word “employed”: The concept of “employment” involves three ingredients, viz. employer, employee, and contract of employment. The ‘employer’ is one who employs, i.e.,

one who engages the services of other persons. The 'employee' is one who works for another for hire

Therefore, 'supervision and control' is the natural outcome when a person is employed by another person. Moreover, the 'employment' referred to in the section is in connection with a manufacturing process that is carried on in the factory which process normally calls for a large measure of coordination between various sections inside a factory and between various individuals even within a section. The persons will have to be guided by those placed in supervisory capacity. A certain amount of control is thus necessarily present in such a case.

In *Shankar Balaji Waje v. State of Maharashtra*, AIR 1963 Bom. 236, the question arose whether bidi roller is a worker or not. The management simply says that the labourer is to produce bidies rolled in a certain form. How the labourer carried out the work is his own concern and is not controlled by the management, which is concerned only with getting bidies rolled in a particular style with certain contents. The Supreme Court held that the bidi roller is not a worker. The whole conception of service does not fit in well with a servant who has full liberty to attend to his work according to his pleasure and not according to the orders of his master. Where the employer did retain direction and control over the workers both in manner of the nature of the work as 'also its details they will be held as workers.

A day labourer, where there was no evidence to show that he was free to work for such period as he likes, free to come and go whenever he chose and free to absent himself at his own sweet will, was held to be a worker. Similarly, women and girls employed in peeling, washing etc., of consignment of prawns brought on the premises at any time of the day or night, without any specified hours of work and without any control over their attendance or the nature, manner or quantum of their work and who after finishing the work go to other premises in the locality where similar consignment of prawns are received, are not Workers (*State of Kerala v. R.E.DSouza*).

(b) Whether relationship of master and servant necessary: The expression "employed" does not necessarily involve the relationship of master and servant. There are conceivable cases in which where no such relationship exists and yet such persons would be workers. The expression a person employed, according to Justice Vyas, means a person who is actually engaged or occupied in a manufacturing process, a person whose work is actually utilised in that process. The definition of worker is clearly enacted in terms of a person who is employed in and not in terms of person who is employed by. It is immaterial how or by whom he is employed so long as he is actually employed in a manufacturing process.

(c) Piece-rate workers—Whether workers: **Piece-rate workers can be workers within the definition of 'worker in the Act, but they must be regular workers and not workers who come and work according to their sweet will (*Shankar Balaji Waje v. State of Maharashtra*, AIR 1967 S.C. 517).** In another case workmen had to work at bidi factory when they liked. The payment was made on piece-rate according to the amount of work done. Within the factory, they were free to work. But the control of the manner in which bidies were ready, by the method of rejecting those which did not come up to the proper standards. In such a case it was exercised which was important (*Birdhi Chand Sharma v. First Civil Judge, Nagpur*, AIR 1961 SC 644). Therefore, whatever method may be adopted for the payment of wages, the important thing to see is whether the workers work

under supervision and control of the employer. It makes no difference whether the worker employed in the manufacturing process is paid time rate wages or piece rate wages.

(d) The partners of a concern, even though they work on premises in the factory cannot be considered to be workers within Section 2(1): (1958 (2) LLJ 252 SC).

(e) An independent contractor: He is a person who is charged with work and has to produce a particular result but the manner in which the result is to be achieved is left to him and as there is no control or supervision as to the manner in which he has to achieve the work, he is not a worker.

(ii) Employment should be direct or through some agency

The words directly or by or through any agency in the definition indicate that the employment is by the management or by or through some kind of employment agency. In either case there is a contract of employment between the

management and the person employed. There should be a privity of contract between them and the management. Only such person can be classified as worker who works either directly or indirectly or through some agency employed for doing his works of any manufacturing process or cleaning, etc., with which the factory is concerned. It does not contemplate the case of a person who comes and that too without his intervention either directly, or indirectly, and does some work on the premises of factory.

(iii) Employment should be in any manufacturing process etc.

The definition of “worker” is fairly wide. It takes within its sweep not only persons employed in manufacturing process but also in cleaning any part of the machinery and premises used for manufacturing process. It goes far beyond the direct connection with the manufacturing process by extending it to other kinds of work which may either be incidental to or connected with not only the manufacturing process itself but also the subject of the manufacturing process (Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others), the concept of manufacturing process has already been discussed. The meaning of the expression employed in cleaning any part of machinery, etc.” and employed in work incidental to..... process, are discussed below:

(a) Employed in cleaning any part of machinery etc.: If a person is employed in cleaning any part of the machinery premises which is used for manufacturing process, he will be held as worker.

(b) Employed in work incidental to process: This clause is very important because it enlarges the scope of the term, manufacturing process. Following illustrative cases will clarify the meaning of this clause:

✓ In *Shinde v. Bombay Telephones*, 1968 (11) LLJ 74, it was held that whether the workman stands outside the factory premises or inside it, if his duties are connected with the business of the factory or connected with the factory, he is really employed in the factory and in connection with the factory.

✓ In *Works Manager, Central Rly. Workshop Jhansi v. Vishwanath and others*, it was held that the definition of worker does not exclude those employees who are entrusted solely with clerical duties, if they otherwise fall within the definition of ‘worker. Timekeepers employed to

maintain attendance of the staff, job cards particularly of the various jobs under operation, and time-sheets of the staff engaged in production of spare parts, repairs, etc.; and head time-keeper who supervise the work of the time-keepers, perform work which is incidental to or connected with the manufacturing process carried on in the factory and would therefore, fall within the definition of the worker in the Act.

- ✓ Munim in a factory is a worker.
- ✓ Workmen in canteen attached to a factory are employees.
- ✓ A person employed by a gas manufacturing works as a coolie for excavating and digging trenches outside the factory for laying pipes for transporting gas to consumers, cannot be held to be a worker (AIR 1961 Bomb. 184).
- ✓ Person employed to supply material to a mason engaged in construction of furnace will be deemed to be employed by the factory to a work incidental to or connected with manufacturing process.
- ✓ In a soap-works, a carpenter preparing the packing cases is a worker because he might legitimately be considered to be engaged in a kind of work incidental to or connected with the subject of the manufacturing process, viz., packaging of soap for being sent out for sale.
- ✓ In the case of *Rohtas Industries Ltd. v. Ramlakhan Singh and others*, A.I.R. 1971 SC 849, a person was employed in a paper factory. He was engaged in supervising and checking quality and weight of waste papers and rags which are the basic raw material for the manufacture of paper. He used to deal with receipts and maintain records of stock and pass the bill of the supplier of waste paper and rags. He used to work in the precincts of the factory and in case of necessities had to work inside the factory. The Supreme Court held that he was working in the factory premises or its precincts in connection with the work of the subject of the manufacturing process, namely the raw material.

(iv) Employment may be for remuneration or not

A person who receives wages as remuneration for his services, a person who receives remuneration on piece-work basis, a person may be working as an apprentice, and a person who is an honorary worker, all come within the definition of a worker. Therefore to be a worker, it is immaterial whether a person is employed for wages or for no wages.

(v) Any member of the armed forces of the Union is excluded from the definition of worker

(vi) Whether all employees are workers?

Since the word employee has not been defined in the Act it follows that all the workers within the ambit of the definition under the Act would be employees, while all employees would not be workers (*Harbanslal v. State of Karnataka*, (1976)1 Karnt.J.111). All persons employed in or in connection with a factory whether or not employed as workers are entitled to the benefits of the Act (*Union of India v. G.M. Kokil*, 1984 SCC (L&S) 631).

Once it is established prima facie that premises in question is a factory within the meaning of the Act, the provisions of Section 103 as to the presumption of employment are immediately attracted

and onus to prove the contrary shifts to the accused (*Prafulbhai Patadia v. The State*, 1976 (12) E.L.R. 329).

Occupier

Section 2(n) of the Act defines the term “occupier” as a person who has ultimate control over the affairs of the factory:

Provided that

- ✓ in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- ✓ in the case of a company, any one of the directors, shall be deemed to be the occupier;
- ✓ in the case of a factory owned or controlled by the Central Government or any State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be, shall be deemed to be the occupier.

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire

- ✓ the owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under (a) Sections 6, 7, 7A, 7B, 11 or 12; (b) Section 17 in so far as it relates to the providing the maintenance of sufficient and suitable lighting in or around the dock; (c) Sections 18, 19, 42, 46, 47 or 49 in relation to the workers employed on such repair or maintenance;
- ✓ The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who

contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be occupier for the purposes of any matter provided for by or under Sections 13, 14, 16 or 17 (save as otherwise provided in this proviso) or Chapter IV (except Section 27) or Sections 43, 44, or 45, Chapter VI, VII, VIII or IX or Sections 108, 109 or 110, in relation to (a) the workers employed directly by him, or by or through any agency, and (b) the machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person.

Therefore an employee of company or factory cannot be occupier. Proviso (ii) to Section 2(n) does not travel beyond scope of main provision and is not violative of Article 14 of Constitution of India. Proviso (ii) is not ultra vires main provisions of Section 2(n). No conflict exists between main provisions of Section 2(n) and proviso (ii). Further, proviso (ii) to Section 2(n) read with Section 92, does not offend Article 21.

Under Section 2(n)(iii), for the purpose of deciding who is an occupier of the factory, the test to be applied is who has ultimate control over its affairs in a government company, in fact the ultimate control lies with government though the company is separate legal entity by having right to manage its affairs. Persons appointed by central government to manage its affairs of factories (of

government companies) were therefore deemed to be appointed as occupiers under the Act (IOC v. CIF, LLJ II SC 1998 604).

Exemption of occupier or manager from liability in certain cases

Section 101 provides exemptions from liability of occupier or manager. It permits an occupier or manager of a factory who is charged with an offence punishable under the Act to bring into the Court any other person whom he charges actual offender and also proves to the satisfaction of the Court that:

- (a) he has used due diligence to enforce the execution of this Act; and
- (b) that the offence in question was committed without his knowledge, consent or connivance, by the said other person.

The other person shall be convicted of the offence and shall be liable to the like punishment as if he were the occupier or manager of the factory. In such a case occupier or manager of the factory is discharged from liability. The Section is an exception to principles of strict liability, but benefit of this would be available only when the requirements of this section are fully complied with and the court is fully satisfied about the proof of facts contemplated in (a) and (b) above.

1.2. Statutory Agencies And Their Powers For Enforcement Of The Act

The State Governments assume the main responsibility for administration of the Act and its various provisions by utilising the powers vested in them. Section 3 empowers the State Government to make rules for references to time of day where Indian Standard Time, being 5-1/2 hours ahead of Greenwich Mean-Time is not ordinarily

observed. These rules may specify the area, define the local mean time ordinarily observed therein, and permit such time to be observed in all or any of the factories situated in the area.

The State Government assumes power under Section 4 of the Act to declare different departments to be separate factories or two or more factories to be single factory for the purposes of this Act. This power will be utilised by the State Government either on its own or on an application made to it by the occupier. But no order could be made on its own motion unless occupier is heard in this regard.

In case of public emergency, Section 5 further empowers the State Government to exempt by notification any factory or class or description of factories from all or any of the provisions of this Act except Section 67 for such period and subject to such conditions as it may think fit, however no such notification shall be made exceeding a period of three months at a time. Explanation to Section 5 defines public emergency as a situation whereby the security of India or of any part of the territory thereof is threatened whether by war or external aggression or internal disturbance.

The State Governments carry out the administration of the Act through:

- ✓ Inspecting Staff
- ✓ Certifying Surgeons
- ✓ Welfare Officers
- ✓ Safety Officers.

(i) The Inspecting Staff

Appointment: Section 8 empowers the State Government to appoint Inspectors, Additional Inspectors and Chief Inspectors, such persons who possess prescribed qualifications.

Section 8(2) empowers the State Government to appoint any person to be a Chief Inspector. To assist him, the government may appoint Additional, Joint or Deputy Chief Inspectors and such other officers as it thinks fit [Section 8(2A)].

Every District Magistrate shall be an Inspector for his district.

The State Government may appoint certain public officers, to be the Additional Inspectors for certain areas assigned to them [Section 8(5)].

The appointment of Inspectors, Additional Inspectors and Chief Inspector can be made only by issuing a notification in the Official Gazette.

When in any area, there are more inspectors than one, the State Government may by notification in the Official Gazette, declare the powers which such Inspectors shall respectively exercise and the Inspector to whom the prescribed notices are to be sent.

Inspector appointed under the Act is an Inspector for all purposes of this Act. Assignment of local area to an inspector is within the discretion of the State Government.

A Chief Inspector is appointed for the whole State. He shall in addition to the powers conferred on a Chief Inspector under this Act, exercise the powers of an Inspector throughout the State. Therefore, if a Chief Inspector files a complaint, the court can legally take cognizance of an offence. Even assignment of areas under Section 8(6) does not militate in any way against the view that the Chief Inspector can file a complaint enabling the court to take cognizance. The Additional, Joint or Deputy Chief Inspectors or any other officer so appointed shall in addition to the powers of a Chief Inspector, exercise the powers of an Inspector throughout the State.

Powers of Inspectors

Section 9 describes the powers of the Inspectors subject to any rules made in this behalf for the purpose of the Act. An Inspector may exercise any of the following powers within the local limits for which he is appointed:

- ✓ He can enter any place which is used or which, he has reasons to believe, is used as a factory.
- ✓ He can make examination of the premises, plant, machinery, article or substance. Inquire into any accident or dangerous occurrence whether resulting in bodily injury, disability or not, and take on the spot or otherwise statements of any person which he may consider necessary for such inquiry.
- ✓ Require the production of any prescribed register or any other document relating to the factory. Seize, or take copies of any register, record of other document or any portion thereof.

- ✓ Take measurement and photographs and make such recordings as he considers necessary for the purpose of any examination.
- ✓ In case of any article or substance found in any premises, being an article or substance which appears to him as having caused or is likely to cause danger to the health or safety of the workers, direct it to be dismantled or subject it to any process or test (but not so as to damage or destroy it unless the same is in the circumstances necessary, for carrying out the purposes of this Act) and take possession of any such article or substance or a part thereof, and detain it for so long as is necessary for such examination.

Production of documents

The Factories Act requires the maintenance of certain registers and records. Inspectors have been empowered to ask for the production of any such documents maintained under law, and the non-compliance of this has been made an offence.

(ii) Certifying Surgeons

Section 10 provides for the appointment of the Certifying Surgeons by the State Government for the purpose of this Act to perform such duties as given below within such local limits or for such factory or class or description of factories as may be assigned to Certifying Surgeon:

- (a) the examination and certification of young persons under this Act;
- (b) the examination of persons engaged in factories in such dangerous occupations or processes as may be prescribed;
- (c) the exercising of such medical supervision as may be prescribed for any factory or class or description of factories.

(iii) Welfare Officer

Section 49 of the Act imposes statutory obligation upon the occupier of the factory of the appointment of Welfare Officer/s wherein 500 or more workers are ordinarily employed. Duties, qualifications and conditions of service may be prescribed by the State Government.

(iv) Safety Officer

Section 40-B empowers the State Government for directing an occupier of factory to employ such number of Safety Officers as specified by it where more than 1,000 workers are employed or where manufacturing process involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein. The duties, qualifications and working conditions may be prescribed by the State Government.

1.3. Approval, Licensing And Registration Of Factories

Section 6 empowers the State Government to make rules with regard to licensing and registration of factories under the Act on following matters:

- ✓ submission of plans of any class or description of factories to the Chief Inspector or the State Government;

- ✓ obtaining previous permission of the State Government or the Chief Inspector, for the site on which factory is to be situated and for construction or extension of any factory or class or description of factories. However, replacement or addition of any plant or machinery within prescribed limits, shall not amount to extension of the factory, if it does not reduce the minimum safe working space or adversely affect the environmental conditions which is injurious to health;
- ✓ considering applications for permission for the submission of plans and specifications;
- ✓ nature of plans and specifications and the authority certifying them;
- ✓ registration and licensing of factories;
- ✓ fees payable for registration and licensing and for the renewal of licences;
- ✓ licence not to be granted or renewed unless notice specified under Section 7 has been given.

Automatic approval

If an application is made for the approval of site for construction or extension of the factory and required plans and specifications have been submitted by registered post to the State Government or the Chief Inspector and if no reply is received within three months from the date on which it is sent the application stands automatically approved [Section 6(2)]. Where the rules require the licensing authority to issue a licence on satisfaction of all legal requirements/record reasons for refusal. Licence could not be refused only on a direction from Government (*S. Kunju v. Kerala*, (1985) 2 LLJ 106).

Appeal against refusal to grant permission

If the State Government or Chief Inspector do not grant permission to the site, construction or extension of a factory, or to the registration and licensing of a factory, the applicant may within 30 days of the date of such refusal appeal to:

- ✓ the Central Government against the order of the State Government;
- ✓ the State Government against the order of any other authority.

1.4. Notice By Occupier

Section 7 imposes an obligation on the occupier of a factory to send a written notice, containing prescribed particulars, to the Chief Inspector at least 15 days before an occupier begins to occupy or use a premises as a factory and at least 30 days before the date of resumption of work in case of seasonal factories, i.e. factories working for less than 180 days in a year.

Contents of notice

A notice must contain following particulars:

- ✓ The name and situation of the factory.
- ✓ The name and address of the occupier.
- ✓ The name and address of the owner of the premises or building (including the precincts, etc., thereof referred to in Section 93).
- ✓ The address at which communication relating to the factory should be sent.
- ✓ The nature of manufacturing process to be carried on in the factory during next 12 months.
- ✓ The total rated horse power installed or to be installed in the factory which shall not include the rated horse power of any separate standby plant.

- ✓ The name of the Manager of the factory for the purpose of this Act.
- ✓ the number of workers likely to be employed in the factory.
- ✓ Such other particulars as may be prescribed.

Notice where new manager is appointed

Whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof, within seven days from the date on which such person takes over charge.

When there is no manager - occupier deemed as manager

During a period for which no person has been designated as Manager of a factory or during which the person designated does not manage the factory any person found acting as manager, will be the manager for the purposes of the Act. Where no such person is found the occupier should be deemed to be the manager of the factory.

1.5. General Duties Of The Occupier

Section 7A is inserted by the Factories (Amendment) Act, 1987, as under:

- ✓ Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
- ✓ Without prejudice to the generality of the provisions of Sub-section (1) the matters to which such duty extends shall include:
 - (a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
 - (b) the arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
 - (c) the provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work;
 - (d) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
 - (e) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.
- ✓ Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

1.6. General Duties Of Manufacturers Etc.

Section 7B provides that every person who designs, manufactures, imports or supplies any article (including plant and machinery) or use in any factory, shall observe the following:

- (a) ensure, that the article is so designed and constructed as to be safe and without risks to the health of the workers when properly used;
- (b) carry out such tests and examination as may be considered necessary for the effective implementation of the provisions of clause (a);
- (c) take such steps as may be necessary to ensure that adequate information will be available:
 - ✓ in connection with the use of the article in any factory;
 - ✓ about the use for which it is designed and tested; and
 - ✓ about any condition necessary to ensure that the article, when put to such use, will be safe, and without risks to the health of the workers.

The Section further provides that where an article is designed or manufactured outside India, it shall be obligatory on the part of the importer to see:

- (a) that the article (including plant and machinery) conforms to the same standards if such article is manufactured in India, or
- (b) if the standards adopted in the country outside for the manufacture of such article is above the standards adopted in India that the article conforms to such standards.

For the above purpose, the concerned person may carry out or arrange for the carrying out of necessary research with a view to the discovery and so far as is reasonably practicable, the elimination or minimisation of any risk to the health or safety of workers to which design or article (including plant and machinery) may give rise.

The section further provides that if research, testing, etc. has already been exercised or carried out, then no such research is required again.

The above duties relate only to things done in the course of the business carried out by him, and to matters within his control.

However, the person may get relief from the exercise of above duties if he gets an undertaking in writing by the user of such article to take necessary steps that the article will be safe and without risk to the health of the workers.

1.7. Measures To Be Taken By Factories For Health, Safety And Welfare Of Workers

Such measures are provided under Chapters III, IV and V of the Act which are as follows:

A. HEALTH

Chapter III of the Act deals with the following aspects.

(i) Cleanliness

Section 11 ensures the cleanliness in the factory. It must be seen that a factory is kept clean and it is free from effluvia arising from any drain, privy or other nuisance. The Act has laid down following provisions in this respect:

- ✓ All the accumulated dirt and refuse on floors, staircases and passages in the factory shall be removed daily by sweeping or by any other effective method. Suitable arrangements should also be made for the disposal of such dirt or refuse.
- ✓ Once in every week, the floor should be thoroughly cleaned by washing with disinfectant or by some other effective method [Section 11(1)(b)].
- ✓ Effective method of drainage shall be made and maintained for removing water, to the extent possible, which may collect on the floor due to some manufacturing process.
- ✓ To ensure that interior walls and roofs, etc. are kept clean, it is laid down that:
 - ✓ white wash or colour wash should be carried at least once in every period of 14 months;
 - ✓ where surface has been painted or varnished, repair or re-varnish should be carried out once in every five years, if washable then once in every period of six months;
 - ✓ where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
- ✓ All doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years.
- ✓ The dates on which such processes are carried out shall be entered in the prescribed register.

If the State Government finds that a particular factory cannot comply with the above requirements due to its nature of manufacturing process, it may exempt the factory from the compliance of these provisions and suggest some alternative method for keeping the factory clean. [Section 11(2)]

(ii) Disposal of waste and effluents

Every occupier of a factory shall make effective arrangements for the treatment of wastes and effluents due to the manufacturing process carried on in the factory so as to render them innocuous and for their disposal. Such arrangements should be in accordance with the rules, if any, laid down by the State Government. If the State Government has not laid down any rules in this respect, arrangements made by the occupier should be approved by the prescribed authority if required by the State Government. (Section 12)

(iii) Ventilation and temperature

Section 13 provides that every factory should make suitable and effective provisions for securing and maintaining (1) adequate ventilation by the circulation of fresh air; and (2) such a temperature as will secure to the workers reasonable conditions of comfort and prevent injury to health. What is reasonable temperature depends upon the circumstances of each case. The State Government

has been empowered to lay down the standard of adequate ventilation and reasonable temperature for any factory or class or description of factories or parts thereof. It may direct that proper measuring instruments at such places and in such position as may be specified shall be provided and prescribed records shall be maintained.

Measures to reduce excessively high temperature: To prevent excessive heating of any workroom following measures shall be adopted:

- ✓ Walls and roofs shall be of such materials and so designed that reasonable temperature does not exceed but kept as low as possible.
- ✓ Where the nature of work carried on in the factory generates excessively high temperature, following measures should be adopted to protect the workers:
 - (a) by separating such process from the workroom; or
 - (b) insulating the hot parts; or
 - (c) adopting any other effective method which will protect the workers.

The Chief Inspector is empowered to direct any factory to adopt such methods which will reduce the excessively high temperature. In this regard, he can specify the measures which in his opinion should be adopted. (Section 13)

(iv) Dust and fume

There are certain manufacturing processes like chemical, textile or jute, etc., which generates lot of dust, fume or other impurities. It is injurious to the health of workers employed in such manufacturing process.

Following measures should be adopted in this respect:

- ✓ Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc., in the work-rooms.
- ✓ Wherever necessary, exhaust appliances should be fitted, as far as possible, to the point of origin of dust fumes or other impurities. Such point shall also be enclosed as far as possible.
- ✓ In stationary internal combustion engine and exhaust should be connected into the open air.
- ✓ In cases of other internal combustion engine, effective measures should be taken to prevent the accumulation of fumes therefrom. (Section 14)

It may be pointed that the evidence of actual injury to health is not necessary. If the dust or fume by reason of manufacturing process is given off in such quantity that it is injurious or offensive to the health of the workers employed therein, the offence is committed under this Section.

Lastly the offence committed is a continuing offence. If it is an offence on a particular date it does not cease to be an offence on the next day and so on until the deficiency is rectified.

(v) Artificial humidification

Humidity means the presence of moisture in the air. In certain industries like cotton, textile, cigarette, etc., higher degree of humidity is required for carrying out the manufacturing process. For this purpose, humidity of the air is artificially increased. This increase or decrease in humidity adversely affects the health of workers.

Section 15(1) empowers the State Government to make rules (i) prescribing the standards of humidification, (ii) regulating methods to be adopted for artificially increasing the humidity of the air, (iii) directing prescribed tests for determining the humidity of the air to be correctly carried out, and recorded, and (iv) prescribing methods to be adopted for securing adequate ventilation and cooling of the air in the work-room.

Section 15(2) lays down that water used for artificial humidification should be either purified before use or obtained from a public supply or other source of drinking water.

Where the water is not purified as stated above. Section 15(3) empowers the Inspector to order, in writing, the manager of the factory to carry out specified measures, before a specified date, for purification of the water.

(vi) Overcrowding

Overcrowding in the work-room not only affect the workers in their efficient discharge of duties but their health also.

Section 16 has been enacted with a view to provide sufficient air space to the workers.

- ✓ Section 16(1) prohibits the overcrowding in the work-rooms to the extent it is injurious to the health of the workers.
- ✓ Apart from this general prohibition Section 16(2) lays down minimum working space for each worker as 14.2 cubic metres of space per worker in every workroom.

For calculating the work area, the space more than 4.2 metres above the level of the floor, will not be taken into consideration.

Posting of notice: Section 16(3) empowers the Chief Inspector who may direct in writing the display of a notice in the work-room, specifying the maximum number of workers which can be employed in that room. According to Section 108, notice should be in English and in a language understood by the majority of the workers. It should be displayed at some conspicuous and convenient place at or near, the entrance. It should be maintained in clean and legible conditions.

Exemptions : The chief Inspector may by order in writing, exempt any work-room from the provisions of this section, subject to such conditions as he may think fit to impose, if he is satisfied that non-compliance of such provision will have no adverse effect on the health of the workers employed in such work-room.

(vii) Lighting

Section 17 of the Factories Act makes following provisions in this respect:

- ✓ every factory must provide and maintain sufficient and suitable lighting, natural, artificial or both, in every part of the factory where workers are working or passing;
- ✓ all the glazed windows and sky lights should be kept clean on both sides;
- ✓ effective provisions should be made for the prevention of glare from a source of light or by reflection from a smooth or polished surface;
- ✓ formation of shadows to such an extent causing eye-strain or the risk of accident to any worker, should be prevented; and
- ✓ the state government is empowered to lay down standard of sufficient and suitable lighting for factories for any class or description of factories or for any manufacturing process.

(viii) Drinking water

Section 18 makes following provisions with regard to drinking water.

- ✓ every factory should make effective arrangements for sufficient supply of drinking water for all workers in the factory;
- ✓ water should be wholesome, i.e., free from impurities;
- ✓ water should be supplied at suitable points convenient for all workers;
- ✓ no such points should be situated within six metres of any washing place, urinals, latrine, spittoon, open drain carrying sullage or effluent or any other source of contamination, unless otherwise approved in writing by the Chief Inspector;
- ✓ all such points should be legible marked Drinking Water in a language understood by majority of the workers;
- ✓ in case where more than 250 workers are ordinarily employed, effective arrangements should be made for cooling drinking water during hot weather. In such cases, arrangements should also be made for the distribution of water to the workers; and
- ✓ the State Government is empowered to make rules for the compliance of above stated provisions and for the examination, by prescribed authorities, of the supply and distribution of drinking water in factories.

(ix) Latrines and urinals

Every factory shall make suitable arrangement for the provision of latrines and urinals for the workers. These points as stated below, are subject to the provisions of Section 19 and the rules laid down by the State Government in this behalf.

- ✓ every factory shall make provision for sufficient number of latrines and urinals of prescribed standard. These should be conveniently situated and accessible to all workers during working hours;
- ✓ separate arrangement shall be made for male and female workers;
- ✓ all these places shall have suitable provisions for lighting and ventilation;
- ✓ no latrine or urinal shall communicate with any work-room unless in between them there is provision of open space or ventilated passage;
- ✓ all latrines and urinals shall be kept in a clean and sanitary conditions at all times;
- ✓ a sweeper shall be employed whose exclusive job will be to keep clean all latrines and urinals;
- ✓ where more than 250 workers are ordinarily employed in a factory, following additional measures shall be taken under Section 19(2):
- ✓ all latrines and urinals accommodation shall be of prescribed sanitary type.
- ✓ all internal walls up to ninety centimeters, and the floors and the sanitary blocks shall be laid in glazed tiles or otherwise furnished to provide a smooth polished impervious surface;
- ✓ the floors, walls, sanitary pan, etc., of latrines and urinals shall be washed and cleaned with suitable detergents and/or disinfectants, at least once in every seven days.

the State Government is empowered to make rules in respect of following:

- ✓ prescribing the number of latrines and urinals to be provided to proportion to the number of male and female workers ordinarily employed in the factory.
- ✓ any additional matters in respect of sanitation in factories;
- ✓ responsibility of the workers in these matters.

(x) Spittoons

Every factory should have sufficient number of spittoons situated at convenient places. These should be maintained in a clean and hygienic condition. (Section 20)

B. SAFETY

Chapter IV of the Act contains provisions relating to safety. These are discussed below:

(i) Fencing of machinery

Fencing of machinery in use or in motion is obligatory under Section 21. This Section requires that following types of machinery or their parts, while in use or in motion, shall be securely fenced by safeguards of substantial construction and shall be constantly maintained and kept in position,

while the parts of machinery they are fencing are in motion or in use. Such types of machinery or their parts are:

- ✓ every moving parts of a prime-mover and flywheel connected to a prime-mover. It is immaterial whether the prime-mover or fly-wheel is in the engine house or not;
- ✓ head-race and tail-race of water wheel and water turbine;
- ✓ any part of stock-bar which projects beyond the head stock of a lathe;
- ✓ every part of an electric generator, a motor or rotary converter or transmission machinery unless they are in the safe position;
- ✓ every dangerous part of any other machinery unless they are in safe position.

(ii) Safety measures in case of work on or near machinery in motion

Section 22 lays down the procedure for carrying out examination of any part while it is in motion or as a result of such examination to carry out the operations mentioned under clause (i) or (ii) of the proviso to Section 21(1). Such examination or operation shall be carried out only by specially trained adult male worker wearing tight fitting clothing (which shall be supplied by the occupier) whose name has been recorded in the register prescribed in this behalf and who has been furnished with a certificate of appointment and while he is so engaged. No woman or young person shall be allowed to clean, lubricate or adjust any part of a prime-mover or any transmission machinery while the prime-mover or transmission machinery is in motion or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication and adjustment thereof would expose the woman or the young person to risk of injury from any moving part either of that machine or of any adjacent machinery [Section 22(2)].

(iii) Employment of young persons on dangerous machines

Section 23 provides that no young person shall be required or allowed to work at any machine to which this section applies unless he has been fully instructed as to dangers arising in connection with the machine and the precautions to be observed and (a) has received sufficient training in work at the machine, or (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(iv) Striking gear and devices for cutting off power

Section 24 provides that in every factory suitable striking gears or other efficient mechanical appliances shall be provided and maintained and used to move driving belts to and from fast and loose pulleys which form part of the transmission machinery and such gear or appliances shall be so constructed, placed and maintained as to prevent the belt from creeping back on the fast pulley. Further, driving belts when not in use shall not be allowed to rest or ride upon shafting in motion. Suitable devices for cutting off power in emergencies from running machinery shall be provided and maintained in every work-room in every factory. It is also provided that when a device which can inadvertently shift from 'off' to 'on position in a factory', cutoff power arrangements shall be provided for locking the devices on safe position to prevent accidental start of the transmission machinery or other machines to which the device is fitted.

(v) Self-acting machines

Section 25 provides further safeguard for workers from being injured by self-acting machines. It provides that no traverse part of self-acting machine in any factory and no material carried thereon shall, if the space over which it runs is a space over which any person is liable to pass whether in the course of his employment or otherwise, be allowed to run on its outward or inward traverse within a distance of forty five centimeters from any fixed structure which is not part of the machines. However, Chief Inspector may permit the continued use of a machine installed before the commencement of this Act, which does not comply with the requirement of this section, on such conditions for ensuring safety, as he may think fit to impose.

(vi) Casing of new machinery

Section 26 provides further safeguards for casing of new machinery of dangerous nature. In all machinery driven by power and installed in any factory (a) every set screw, bolt or key on any revolving shaft, spindle, wheel or pinion shall be so sunk, encased or otherwise effectively guarded as to prevent danger; (b) all spur, worm and other toothed or friction gearing which does not require frequent adjustment while in motion, shall be completely encased unless it is so situated as to be so safe as it would be if it were completely encased. The section places statutory obligation on all persons who sell or let on hire or as agent of seller or hire to comply with the section and in default shall be liable to punishment with imprisonment for a term which may extend to 3 months or with fine which may extend to Rs. 500 or with both.

(vii) Prohibition of employment of woman and children near cotton openers

According to Section 27, no child or woman shall be employed in any part of factory for pressing cotton in which a cotton opener is at work. However, if the feed-end of a cotton opener is in a room separated from the delivery end by a partition extending to the roof or to such height as the inspector may in any particular case specify in writing, women and children may be employed on the side of partition where the feed-end is situated.

(viii) Hoists and lifts

Section 28 provides that in every factory: (i) every hoist and lift shall be of good mechanical construction, sound material and adequate strength. It shall be properly maintained and thoroughly examined by a competent person at least once in every period of six months and a register shall be kept containing the prescribed particulars of every such examination, (ii) every hoist way and lift way shall be sufficiently protected by an enclosure fitted with gates and the hoist or lift and every such enclosure shall be so constructed as to prevent any person or thing from being trapped between any part of the hoist or lift and any fixed structure or moving part, (iii) the maximum safe working load shall be marked on every hoist or lift and no load greater, than such load shall be marked on every hoist or lift and no load greater than such load shall be carried thereon, (iv) the cage of every hoist and lift shall be fitted with a gate on each side from which access is afforded to a landing (v) such gates of the hoist and lift shall be fitted with interlocking or other efficient device to secure that the gate cannot be opened except when the cage is at the landing and that the cage cannot be moved unless the gate is closed.

(ix) Lifting machines, chains, ropes and lifting tackles

In terms of Section 29, in any factory the following provisions shall be complied with respect of every lifting machine (other than a hoist and lift) and every chain, rope and lifting tackle for the purpose of raising or lowering persons, goods or materials:

(a) all parts including the working gear, whether fixed or movable, shall be (i) of good construction, sound material and adequate strength and free from defects; (ii) properly maintained; (iii) thoroughly examined by a competent person at least once in every period of 12 months or at such intervals as Chief Inspector may specify in writing and a register shall be kept containing the prescribed particulars of every such examination;

(b) no lifting machine or no chain, rope or lifting tackle, shall, except for the purpose of test, be loaded beyond the safe working load which shall be plainly marked thereon together with an identification mark and duly entered in the prescribed register and where it is not practicable, a table showing the safe working loads of every kind and size of lifting machine or chain, rope or lifting tackle in use shall be displayed in prominent positions on that premises;

(c) while any person is employed or working on or near the wheel track of a traveling crane in any place where he would be liable to be struck by the crane, effective measures shall be taken to ensure that the crane does not approach within 6 metres of that place.

(x) Safety measures in case of use of revolving machinery

Section 30 of the Act prescribes for permanently affixing or placing a notice in every factory in which process of grinding is carried on. Such notice shall indicate maximum safe working peripheral speed of every grindstone or abrasive wheel, the speed of the shaft or spindle upon such shaft or spindle necessary to secure such safe working peripheral-speed. Speed indicated in the notice shall not be exceeded and effective measures in this regard shall be taken.

(xi) Pressure plant

Section 31 provides for taking effective measures to ensure that safe working pressure of any plant and machinery, used in manufacturing process operated at pressure above atmospheric pressure, does not exceed the limits. The State Government may make rules to regulate such pressures or working and may also exempt any part of any plant or machinery from the compliance of this section.

(xii) Floor, stairs and means of access

Section 32 provides that in every factory (a) all floors, steps, stairs passages and gangways shall be of sound construction and properly maintained and shall be kept free from obstruction and substances likely to cause persons to slip and where it is necessary to ensure safety, steps, stairs passages and gangways shall be provided with substantial handrails, (b) there shall, be so far as is reasonably practicable, be provided, and maintained safe means of access of every place at which any person is at any time required to work; (c) when any person has to work at a height from where he is likely to fall, provision shall be made, so far as is reasonably, practicable, by fencing or otherwise, to ensure the safety of the person so working.

(xiii) Pits, sumps, openings in floors etc.

Section 33 requires that in every factory every fixed vessel, sump, tank, pit or opening in the ground or in a floor which, by reason of its depth, situation, construction, or contents is or may be source of danger shall be either securely covered or securely fence. The State Government may exempt any factory from the compliance of the provisions of this Section subject to such conditions as it may prescribe.

(xiv) Excessive weights

Section 34 provides that no person shall be employed in any factory to lift, carry or make any load so heavy as to be likely to cause him injury. The State Government may make rules prescribing the maximum weights which may be lifted, carried or moved by adult men, adult women, adolescents and children employed in factories or in any class or description of factories or in carrying on any specified process.

(xv) Protection of eyes

Section 35 requires the State Government to make rules and require for providing the effective screens or suitable goggles for the protection of persons employed on or in immediate vicinity of any such manufacturing process carried on in any factory which involves (i) risk of injury to the eyes from particles or fragments thrown off in the course of the process or; (ii) risk to the eyes by reason of exposure to excessive light.

(xvi) Precautions against dangerous fumes, gases etc.

Section 36 provides (1) that no person shall be required or allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume, vapor or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.

(2) No person shall be required or allowed to enter any confined space as is referred to in subsection (1), until all practicable measures have been taken to remove any gas, fume, vapor or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapor and unless:

(a) a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapor or dust; or

(b) such person is wearing suitable breathing apparatus and a belt securely attached to a rope, the free end of which is held by a person outside the confined space.

(xvii) Precautions regarding the use of portable electric light

Section 36A of the Act provides that in any factory (1) no portable electric light or any other electric appliance of voltage exceeding 24 volts shall be permitted for use inside any chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided; and (2) if any inflammable gas, fume or dust is likely to be present in such chamber, tank, vat, pit, pipe, flue or other confined space unless adequate safety devices are provided, no lamp or light other than that of flame proof construction shall be permitted to be used therein.

(xviii) Explosive or inflammable dust gas, etc.

Sub-section (1) of section 37 of the Act provides that in every factory where any manufacturing process produces dust, gas, fume or vapor of such character and to such extent to be likely to explode on ignition, all practicable measures shall be taken to prevent any such explosion by (a) effective enclosure of the plant or machinery used in the process (b) removal or prevention of the accumulation of such dust, gas fume or vapor, and (c) exclusion or effective enclosure of all possible sources of ignition.

(xix) Precautions in case of fire

Section 38 provides that in every factory all practicable measures shall be taken to outbreak of fire and its spread, both internally and externally and to provide and maintain (a) safe means of escape for all persons in the event of fire, and (b) the necessary equipment and facilities for extinguishing fire.

Effective measures shall be taken to ensure that in every factory all the workers are familiar with the means of escape in case of fire and have been adequately trained in the outline to be followed in such case.

(xx) Power to require specification of defective parts or test to stability

Section 39 states that when the inspector feels that the conditions in the factory are dangerous to human life or safety he may serve on the occupier or manager or both notice in writing requiring him before the specified date to furnish such drawings, specifications and other particulars as may be necessary to determine whether such building, machinery or plant can be used with safety or to carry out such test in such a manner as may be specified in the order and to inform the inspector of the results thereof.

(xxi) Safety of buildings or machinery

Section 40 provides that the inspectors in case of dangerous conditions of building or any part of ways, machinery or plant requires the manager or occupier or both to take such measures which in his opinion should be adopted and require them to be carried out before a specified date. In case the danger to human life is immediate and imminent from such usage of building, ways of machinery he may order prohibiting the use of the same unless it is repaired or altered.

(xxii) Maintenance of buildings

Section 40-A provides that if it appears to the inspector that any building or part of it is in such a state of disrepair which may lead to conditions detrimental to the health and welfare of workers he may serve on the manager or occupier or both, an order in writing specifying the measures to be carried out before a specified date.

(xxiii) Safety officers

Section 40-B provides that in every factory (i) where 1,000 or more workers are ordinarily employed or (ii) where the manufacturing process or operation involves risk of bodily injury, poisoning or disease or any other hazard to health of the persons employed therein, the occupier shall employ such number of safety officers as may be specified in the notification with such duties and qualifications and conditions of service as may be prescribed by State Government.

(xxiv) Power to make rules to supplement this Chapter

This is vested in the State Government under Section 41 for such devices and measures to secure the safety of the workers employed in the factory.

C. WELFARE

Following provisions under Chapter (v) of the Act, relate to the measures to be taken for the welfare of workers.

(i) Washing facilities

Section 42 provides that every factory should provide and maintain adequate and suitable washing facilities for its workers. For the use of male and female, such facilities should be separate and adequately screened. Such facilities should be conveniently accessible for all workers and be kept in a state of cleanliness. The State Government is empowered to make rules prescribing standards of adequate and suitable washing facilities.

(ii) Facilities for storing and drying clothing

Section 43 empowers the State Government in respect of any factory or class or description of factories to make rules requiring the provision, therein of (i) suitable places for keeping clothing not worn during working hours, and (ii) for drying of wet clothing.

(iii) Facilities for sitting

There are certain operations which can be performed by the workers only in a standing position. This not only affects the health of a worker but his efficiency also.

According to Section 44(1), every factory shall provide and maintain suitable facilities for sitting, for those who work in standing position so that they may make use of them as an when any opportunity comes in the course of their work. If, in the opinion of the Chief Inspector, any work can be efficiently performed in a sitting position, he may direct, in writing, the occupier of the factory, to provide before a specified date such seating arrangements as may be practicable, for all workers so engaged. The State Government, may by a notification in the Official Gazette, declare that above provisions shall not apply to any specified factory or any manufacturing process.

(iv) First aid appliances

As per Section 45, the following arrangements should be made in every factory in respect of first-aid facilities.

- ✓ Provision of at least one first-aid box or cup-board, subject to following conditions, for every 150 workers ordinarily employed at any one time in the factory.
- ✓ It should be equipped with prescribed contents and nothing else should be stored in it.
- ✓ It should be properly maintained and readily accessible during all working hours.
- ✓ A responsible person who holds a certificate in first-aid treatment, recognized by the State Government should be made the in-charge of such first-aid box or cup-board. Such a person should be readily available during working hours of the factory. Where there are different shifts in the factory, a separate person may be appointed for each shifts provided he is a responsible person and trained in first-aid treatment.

- ✓ Where more than 500 workers are ordinarily employed in a factory, an ambulance room should be provided and maintained by every such factory. Such room should be of prescribed size containing prescribed equipments and is in charge of such medical and nursing staff as may be prescribed.

Canteens

(1) The State Government may make rules requiring that in any specified factory wherein more than 250 workers are ordinarily employed, a canteen shall be provided and maintained by the occupier for the use of workers.

(2) Such rules may relate to any of the following matter:

- ✓ the date by which canteen shall be provided;
- ✓ the standards in respect of construction, accommodation, furniture and other equipment of the canteen;
- ✓ the foodstuffs to be served and the prices to be charged;
- ✓ the items of expenditure in the running of the canteen which are not to be taken into account in fixing the cost of foodstuffs and which shall be borne by the employer;
- ✓ the constitution of a Managing Committee for the canteen and the representation of the workers in the management of the canteen; and
- ✓ the delegation, to the chief inspector, subject to such conditions as may be prescribed, of the power to make rules under clause (iii). (Section 46)

Where the statute casts an obligation to own a canteen in the factory, and the establishment runs a canteen through a contractor who brings the workers for the canteen would be part and parcel of the establishment and the canteen workers would be deemed to be regular employees of the establishment entitled to arrears of salary and other monetary benefits (Tamil Manila Thozilalar Sangam v. Chairman TNEB, 1994 CLA 34 Mad. 63.)

(vi) Shelters, rest rooms and lunch rooms

The provision of some sort of shelter is a must, where the workers can take their meals brought by them during rest interval. The following provisions under Section 47 of the Act have been made in this respect:

- ✓ In every factory where more than 150 workers are ordinarily employed, the occupier should make adequate and suitable arrangements for shelters or rest rooms and lunch-room with provision of drinking water where the workers can take rest of or eat meals brought by them. However any canteen which is maintained in accordance with provisions of Section 45 shall be regarded as part of the requirements of this sub-section. Where a lunch room exists no worker shall eat any food in the workroom.

- ✓ Such places should be equipped with the facility of drinking water.
- ✓ Such places should be sufficiently lighted, ventilated and kept in cool and clean conditions.
- ✓ The construction and accommodation, furniture and equipment of such place should conform to the standards, if any, laid down by the State Government.

By a notification in the Official Gazette, the State Government may exempt any factory from the compliance of these provisions. Further, where any canteen is maintained under Section 45, then provision of such shelter room, etc., is not necessary.

(vii) Creches

Following provisions have been made in respect of creches in the factories:

- ✓ In every factory wherein more than 30 women workers are ordinarily employed, the facility of suitable room or rooms should be provided and maintained for the use of children under the age of six years of such women.
- ✓ There should be adequate accommodation in such rooms.
- ✓ These places should be sufficiently lighted and ventilated and kept in clean and sanitary conditions.

Women trained in the care of children and infants should be made in charge of such rooms.

The State Government is empowered to make rules in respect of following matters:

- ✓ Location and standards in respect of construction, accommodation, furniture and other equipment of such places.
- ✓ Provisions of facilities for washing and changing clothing of children or any other additional facility for their care.
- ✓ Provisions of free-milk or refreshment or both for children.
- ✓ Facilities for the mothers of such children to feed them at suitable intervals in the factory. (Section 48)

(viii) Welfare officers

According to Section 49(1), in every factory wherein 500 or more workers are ordinarily employed, the occupier should employ such number of welfare officers as may be prescribed. The State Government is empowered to prescribe the duties, qualifications and conditions of service of such welfare officers. The provisions of Section 49 also apply to seasonal factories like sugar factories etc.

The State Government is empowered to lay down rules as to the conditions of service of welfare officers. The conditions of service may include matters in respect of pay grades, period of probation and confirmation, dismissal or termination or retirement etc. In the case of *Associated Cement Cos. Ltd. v. Sharma*, A.I.R. 1965 S.C. 1595, the Supreme Court held that Rule 6 of Punjab Welfare Officers Recruitment and Conditions of Service Rules, 1952, requiring the

concurrence of the Labour Commissioner before the management can dismiss or terminate the services of Welfare Officer is not ultra vires.

(ix) Powers to make rules to supplement this chapter

The State Government is empowered to make rules exempting factory or class or description of factories from

the compliance of provisions of this chapter, provided alternative arrangements for workers welfare have been made to the satisfaction of the authorities. Such rules may require that workers representatives shall be associated with the management of the welfare arrangements of the workers. (Section 50)

1.8. Special Provisions Relating To Hazardous Processes

Section 41A. Constitution of Site Appraisal Committees: (1) The State Government may, for purpose of advising it to consider applications for grant of permission for the initial location of a factory involving a hazardous process or for the expansion of any such factory, appoint a site appraisal committee consisting of

- (a) the Chief Inspector of the State who shall be its Chairman;
- (b) a representative of the Central Board for the prevention and control of water pollution appointed by the Central Government under Section 3 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (c) a representative of the Central Board for the Prevention and Control of Air Pollution referred to in Section 3 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (d) a representative of the state board appointed under Section 4 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);
- (e) a representative of the state board for the prevention and control of air pollution referred to in Section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);
- (f) a representative of the Department of Environment in the State;
- (g) a representative of the Meteorological Department of the Government of India;
- (h) an expert in the field of occupational health; and
- (i) a representative of the Town Planning Department of the State Government.

and not more than five other members who may be co-opted by the State Government who shall be

- ✓ a scientist having specialised knowledge of the hazardous process which will be involved in the factory,

✓ a representative of the local authority within whose jurisdiction the factory is to be established, and

✓ not more than other person as deemed fit by the State Government.

(2) The Site Appraisal Committee shall examine an application for the establishment of a factory involving hazardous process and make its recommendation to the State Government within a period of ninety days of the receipt of such application in the prescribed form.

(3) Where any process relates to a factory owned or controlled by the Central Government or to a corporation or company owned or controlled by the Central Government, the State Government shall co-opt in the Site Appraisal Committee a representative nominated by the Central Government as a member of the Committee.

(4) The Site Appraisal committee shall have power to call for any information from the person making an application for the establishment or expansion of a factory involving a hazardous process.

(5) Where the State Government has granted approval to an application for the establishment or expansion of a factory involving a hazardous process. It shall not be necessary for an applicant to obtain a further approval from the Central Board or the State Board established under the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), and the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981).

Section 41B. Compulsory disclosure of information by the occupier: (1) The occupier of every factory involving a hazardous process shall disclose in the manner prescribed all information regarding dangers, including health hazards and the measures to overcome such hazards arising from the exposure to or handling of the materials

or substances in the manufacture, transportation, storage and other processes, to the workers employed in the factory, the Chief Inspector, the local authority within whose jurisdiction the factory is situated and the general public in the vicinity.

(2) The occupier shall, at the time of registering the factory involving a hazardous process, lay down a detailed policy with respect to the health and safety of the workers employed therein and intimate such policy to the Chief Inspector and the local authority and, thereafter, at such intervals as may be prescribed, inform the Chief Inspector and the local authority of any change made in the said policy.

(3) The information furnished under Sub-section (1) shall include accurate information as to the quantity, specifications and other characteristics of wastes and the manner of their disposal.

(4) Every occupier shall, with the approval of the Chief Inspector, draw up an on-site emergency plan and detailed disaster control measures for his factory and make known to the workers employed therein and to the general public living in the vicinity of the factory the safety measures required to be taken in the event of an accident taking place.

(5) Every occupier of a factory shall,

(a) if such factory engaged in a hazardous process on the commencement of the Factories (Amendment) Act, 1987, within a period of thirty days of such commencement; and

(b) if such factory proposes to engage in a hazardous process at any time after such commencement, within a period of thirty days before the commencement of such process,

inform the Chief Inspector of the nature and details of the process in such form and in such manner as may be prescribed.

(6) Where any occupier of a factory contravenes the provisions of Sub-section (5), the licence issued under Section 6 to such factory shall, notwithstanding any penalty to which the occupier or factory shall be subjected to under the provisions of the this Act, be liable for cancellation.

(7) The occupier of a factory involving a hazardous process shall, with the previous approval of the Chief Inspector, lay down measures for the handling, usage, transportation and storage of hazardous substances inside the factory premises and the disposal of such substances outside the factory premises and publicise them in the manner prescribed among the workers and the general public living in the vicinity.

Section 41C. Specific responsibility of the occupier in relation to hazardous processes:

Every occupier of a factory involving any hazardous process shall

(a) maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical toxic or any other harmful substances which are manufactured,

stored handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed;

(b) appoint persons who possess qualifications and experience in handling hazardous substances and competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed;

Provided that where any question arises as to the qualifications and experience of a person so appointed, the decision of the Chief Inspector shall be final;

(c) provide for medical examination of every worker

(a) before such worker is assigned to a job involving the handling of, a working with, a hazardous substance, and

(b) while continuing in such job, and after he has ceased to work in such job at intervals not exceeding twelve months, in such manner as may be prescribed.

Section 41D. Power of Central Government to appoint Inquiry Committee: (1) The Central Government may, in event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory with a view to finding out the causes of any failure or neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected, or likely to be affected, due to such failure or neglect and for the prevention and recurrence of such extraordinary situations in future in such factory or elsewhere.

(2) The Committee appointed under sub-section (1) shall consist of a Chairman and two other members and the terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation.

(3) The recommendations of the Committee shall be advisory in nature.

Section 41E. Emergency standards: (1) Where the Central Government is satisfied that no standards of safety have been prescribed in respect of a hazardous process or class of hazardous processes or where the standards so prescribed are in-adequate, it may direct the Director-General of Factory Advice Service and Labour Institutes or any institution specialised in matter relating to standards of safety in hazardous processes, to lay down emergency standards for enforcement of suitable standards in respect of such hazardous processes.

(2) The emergency standards laid down under sub-section (1) shall, until they are incorporated in the rules made under this Act, be enforceable and have the same effect as if they had been incorporated in the rules made under this Act.

Permissible limits of exposure of chemical and toxic substances: (1) The maximum permissible threshold limits of exposure of chemical and toxic substances in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the Second Schedule (may refer to the bare Act).

(2) The Central Government may, at any time, for the purpose of giving effect to any scientific proof obtained from specialised institutions or expert in the field, by notification in the Official Gazette, make suitable changes in the said Schedule. (Section 41F)

Workers participation in safety management: (1) The occupier shall, in every factory where a hazardous process takes place, or where hazardous substances are used or handled, set up a safety Committee consisting of equal number of representatives of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically the measures taken in that behalf;

Provided that the State Government may, by order in writing and for reasons to be recorded, exempt the occupier of any factory or class of factories from setting up such Committee.

(2) The composition of the safety Committee, the tenure of office of its members and their rights and duties shall be such as may be prescribed. (Section 41G)

Right of workers to warn about imminent danger: (1) Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in charge of the factory or the process concerned directly or through their representatives in the Safety Committee and simultaneously bring the same to the notice of the Inspector.

(2) It shall be the duty of such occupier, agent, manager or the person in charge of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith of the action taken to the nearest Inspector.

(3) If the occupier, agent, manager or the person in charge referred to in sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest inspector whose decision on the question of the existence of such imminent danger shall be final. (Section 41H)

1.9. Working Hours Of Adults

Chapter VI contains provision for regulating working hours for the adult workers and the same are explained below:

(i) Weekly hours

An adult worker shall be allowed to work only for forty eight hours in any week. (Section 51)

(ii) Weekly holidays

Section 52 provides that there shall be holiday for the whole day in every week and such weekly holiday shall be on the first day of the week. However, such holiday may be substituted for any one of the three days immediately before or after the first day of the week provided the manager of the factory has:

- ✓ delivered a notice at the office of the Inspector; and
- ✓ displayed a notice in the factory to this effect.

The effect of all this is that subject to above said conditions (i) and (ii) there shall be a holiday during ten days. In other words no adult worker shall work for more than ten days consecutively without a holiday for the whole day. It is not possible for an employer to change the weekly off solely on the ground that there was no material available for work to be provided on a particular date, avoiding requirements to be fulfilled under Section 25(m) of Industrial Disputes Act regarding lay off (LAB IC 1998 Bom. 1790).

Such notices of substitution may be cancelled by an appropriate notice but not later than the day of weekly holiday or the substituted holiday whichever is earlier.

(iii) Compensatory holidays

When a worker is deprived of any of the weekly holiday as result of passing of an order or making of a rule exempting a factory or worker from the provisions of Section 52, he is entitled to

compensatory holidays of equal number of the holidays so lost. These holidays should be allowed either in the same month in which the holidays became due or within next two months immediately following that month. (Section 53)

(iv) Daily hours

According to Section 54, an adult worker, whether male or female shall not be required or allowed to work in a factory for more than 9 hours in any day. Section 54 should be read with Section 59. In other words, the daily hours of work should be so adjusted that the total weekly hours does not exceed 48. The liability of the employer under this Section cannot be absolved on the ground that the workers are willing to work for longer hours without any extra payment.

The daily maximum hours of work specified in Section 54 can be exceeded provided

- ✓ it is to facilitate the change of shift; and
- ✓ the previous approval of the Chief Inspector has been obtained.
- ✓ Intervals for rest

No adult worker shall work continuously for more than 5 hours unless a rest interval of at least half an hour is given to him. [Section 55(1)]

The State Government or subject to the control of the State Government the Chief Inspector may, by written order for the reasons specified therein, exempt any factory, from the compliance of above provisions to the extent that the total number of hours worked without rest interval does not exceed six. [Section 55(2)]

(vi) Spreadover

Section 56 provides that the daily working hours should be adjusted in such a manner, that inclusive of rest interval under Section 55, they are not spreadover more than 10-1/2 hours on any day. Thus, we see this Section restricts the practice of forcing the stay of workers in the factory for unduly long periods without contravening the provision of Section 54 relating to daily hours of work.

Proviso to Section 56 provides that the limit may be extended up to 12 hours by the Chief Inspector for reasons to be specified in writing.

(vii) Night shifts

Where a worker in a factory works in night shifts, i.e., shift extending beyond mid-night:

- ✓ the weekly or compensatory holiday shall be a period of 24 consecutive hours beginning when his shift ends;
- ✓ the following day shall be deemed to the period of 24 hours beginning when shift ends, and the hours he has worked after mid-night shall be counted in the previous day. (Section 57)

(viii) Prohibition of overlapping shifts

According to Section 58(1), where the work in any factory is carried on by means of multiple shifts, the period of shifts should be arranged in such a manner that not more than one relay of workers is engaged in work of the same kind at the same time.

In case of any factory or class or description of factories or any department or section of a factory or any category or description of workers, the State Government or subject to the control of the State Government, the Chief Inspector may, by written order and for specified reasons, grant exemption from the compliance of the provisions of Section 58(1) on such condition as may be deemed expedient. [Section 58(2)]

(ix) Extra wages for overtime

The following provisions have been made in respect of overtime wages:

Where a worker works in a factory for more than 9 hours in any day or more than 48 hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. [Section 59(1)]

Meaning of ordinary rate of wages

According to Section 59(2) ordinary rate of wages means:

- ✓ basic wages; plus,
- ✓ allowances which include the cash equivalent of the advantage accruing through the concessional sale to workers of food grains and other articles as the worker is for the time being entitled to, but it does not include a bonus and wages for overtime work.

House rent allowance, though payable to employers who were not provided with accommodation, cannot be taken into account to calculate overtime wages of employees provided with such accommodation (*Govind Babu Salve v. Vishwanath Janardhan Joshi*, 1995 SCC (L&S) 308). An employer requiring the workman to work for more than the maximum number of hours overtime work postulated by Section 64(4)(iv) cannot merely on this ground, deny him overtime wages for such excessive hours (*HMT v. Labour Court*, 1994 I LLN 156).

Rate of wages for piece rate workers

Where the workers in a factory are paid on piece rate basis, the time rate shall be deemed to be equivalent to the daily average of their full-time earnings for the days on which they actually worked on the same or identical job during the month immediately preceding the calendar month during which the over-time work was done and such time rates shall be deemed to be the ordinary rates of wages of those workers.

However, in case of a worker who has not worked in the immediately preceding calendar month on the same or identical job, the time rate shall be deemed to be equivalent to the daily average of the earnings of the worker for the days on which he actually worked in the week in which the overtime work was done. [Section 59(3)]

(x) Restriction on double employment

According to Section 60, no adult worker shall be required or allowed to work in any factory on any day if he has already been working in any other factory on that day. However, in certain exceptional circumstances as may be prescribed, the double employment may be permitted.

(xi) Notice of period of work for adults

As per Section 61(1), a notice of period of work, showing clearly for everyday the periods during which adult workers may be required to work, shall be displayed and correctly maintained in every factory. The display of notice should be in accordance with the provisions of Section 108(2).

(2) The periods shown in the notice shall not contravene the provisions of the Factories Act regarding:

- (a) Weekly hours, Section 51.
- (b) Weekly holidays, Section 52.
- (c) Compensatory holidays, Section 53.
- (d) Daily Hours, Section 54.
- (e) Intervals of rest, Section 55.
- (f) Spread over of working hours, Section 56 and
- (g) Prohibition of overlapping shifts, Section 58.

(3) The periods of work shall be fixed before hand in any of the following ways:

- ✓ where all the adult workers work during the same periods, the manager of the factory shall fix those periods for such workers generally; [Section 61(3)]
- ✓ where all the adult workers are not working during the same period, the manager of the factory shall classify them into groups according to the nature of their work indicating the number of workers in each group; [Section 61(4)]
- ✓ the manager shall fix periods of work for each such group provided they are not working on shift basis; [Section 61(5)]
- ✓ where any group is working on a system of shifts, periods shall be fixed, by the manager, during which each relay of the group may work provided such relays are not subject to predetermined periodical changes of shift; [Section 61(6)]
- ✓ where the relays are subject to predetermined periodical changes of shifts, the manager shall draw up a scheme of shifts, where under the periods during which any relay of the group may be required to work and the relay which will be working at any time of the day shall be known for any day. [Section 61(7)]

(4) The form of such notice and the manner in which it shall be maintained, may be prescribed by the State Government. [Section 61(8)]

(5) Any proposed change in the system of work in the factory, which necessitates a change in the notice, shall be notified to the Inspector in duplicate before the change is made. No such change shall be made except with the previous sanction of the Inspector and that too until one week has elapsed since the last change, [Section 61(10)]. This provision intends to prevent sudden variations or casual alterations in the periods of work.

(xii) Register of adult workers

The manager of every factory shall maintain a register of adult workers to be available to the Inspector at all times during working hours containing the following particulars:

- ✓ the name of worker;
- ✓ the nature of his work;
- ✓ the group, if any, in which he is included;
- ✓ where his group works on shifts, the relay to which he is allotted; and
- ✓ other particulars as may be prescribed.

Where any factory is maintaining a muster roll or a register which contains the abovementioned particulars, the Inspector may, by order in writing, direct that such muster roll or register shall be maintained in place of and be treated as the register of adult workers in that factory (Section 62). Further, an adult worker shall not be required or allowed to work in the factory unless his particulars have been entered in this register. [Section 62(IA)]

Inspection of the register

Section 62(1) empowers the Inspector to demand the production of register of adult workers at all times during working hours or when any work is being carried on in the factory. It is the duty of the manager to produce the register when demanded at the time of inspection. If the manager does not happen to be on the premises at the time of inspection he should make arrangement that the register is made available to the inspector. The evident intention of the legislature is that the register should be at the place where the work is going on. Thus, where a manager is absent at the time of inspection of the factory by the inspector and the assistant manager, who is present at that time fails to produce register on demand, the manager has committed breach of Section 62.

Effect of entry in the register

If the name of any person is entered in the register of adult workers, it is a conclusive evidence that the person is employed in the factory. In other words, there is a presumption that the person whose name appears in the attendance register, is employed in the factory.

Liability to maintain register

The liability to maintain register of adult workers has been imposed on the manager of the factory. The occupier cannot be held liable for failure of the manager to maintain the register. But if somebody else has been made responsible for maintaining such register, manager can plead under Section 101 that the offence was committed by another person including the occupier.

(xiii) Hours of work to correspond with notice under Section 61 and register under Section 62

No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of period of work for adults displayed in the factory and the entries made before had against his name in the register of adult workers of the factory. (Section 63)

Presence of worker during rest period

Where a worker is merely present during the rest period as notified or is found working during that period, there is no contravention of Section 63 and hence not punishable.

(xiv) Power to make exempting rules

(1) The State Government is empowered under Section 64, to make rules defining certain persons holding supervisory or managerial or confidential positions and granting exemptions to them from the provisions of this chapter except Section 66(1)(b) and proviso to Section 66(1) provided that such person shall be entitled for extra wages in respect of overtime under Section 59 if his ordinary rate of wages is not more than Rs. 750 per month.

1.10. Additional Provisions Regulating Employment Of Women In A Factory

We have discussed the provisions relating to working hours of adult workers, both male and female. However, certain additional restrictions have been found necessary on the working hours of female workers. Section 66 makes following provisions in this respect.

- ✓ No exemption may be granted to female worker, from the provisions of Section 54 relating to daily hours of work.
- ✓ Women workers shall not be employed except between the hours of 6 a.m. and 7 p.m. However, the State Government may by a notification in the Official Gazette, vary these limits to the extent that no woman shall be employed between the hours of 10 p.m. and 5 a.m.
- ✓ There shall be no change of shifts except after a weekly holiday or any other holiday.

Exemptions from the above restriction

The State Government has been empowered to make rules granting exemptions from above stated restriction in respect of women working in fish-curing or fish canning factories. This has been done with a view to prevent damage to or deterioration in any raw material. However, before granting any exemption, the State Government may lay down any condition as it thinks necessary. Such rules made by the State Government shall remain in force for not more than three years at a time. [Section 66(3)]

1.11. Employment Of Young Persons And Children

Most of the civilised nations restrict the employment of children in the factories. The Royal Commission on Labour observed that this is based on the principle that the supreme right of the State to the guardianship of children controls the natural rights of the parent when the welfare of society or of the children themselves conflicts with parental rights. Workers as young as five years

of age may be found in some of these places working without adequate meal, intervals or weekly rest days at as low as 2 annas in the case of those tenderest years. Therefore, to curb these and other evil practices of employing children, following legislative measures have been adopted.

(i) General prohibition as to employment of children

According to Section 67, a child who has not completed his fourteenth year of age, shall not be employed in any factory.

(ii) Employment of children and Adolescents—Conditions

According to Section 68, children completing their fourteenth year or an adolescent, shall not be required to work in any factory, unless following conditions are fulfilled:

- ✓ the manager of the factory has obtained a certificate of fitness granted to such young person under Section 69;
- ✓ while at work, such child or adolescent carries a token giving reference to such certificate.

(iii) What is a certificate of fitness

Under Section 69 of the Act, before a young person is employed in the factory, a Certifying Surgeon has to certify that such person is fit for that work in the factory. To get this certificate, an application to a Certifying Surgeon has to made either:

- ✓ by the young person himself; or
- ✓ by his parent or guardian; or
- ✓ by the manager of the factory.

If the application is made by a person other than the manager, it must be accompanied by a document, signed by the manager, that such young person will be employed in the factory if a certificate of fitness is granted in his favor. [Section 69(1)]

(iv) Certificate of fitness to work as a child

The Certifying Surgeon may grant or renew to any such young person, a certificate of fitness, in the prescribed form to work as a child, if, after examination, he is satisfied that

- ✓ such young person has completed his 14th year;
- ✓ has attained the prescribed physical standards; and
- ✓ is fit for such work. [Section 69(2)(a)]

(v) Certificate of fitness to work as an adult

If the Certifying Surgeon, after examination is satisfied that such a young person has completed his 15th year and is fit for a full days work in the factory, he may grant or renew a certificate of fitness, in the prescribed form, to such young person, to work as an adult. [Section 69(2)(b)]

Proviso to Section 69(2) provides that before granting or renewing a certificate of fitness, the Certifying Surgeon must have personal knowledge of the place of the work and manufacturing process wherein such young person will be employed. If he has no personal knowledge, he must examine such place personally.

Other features of certificate of fitness

- ✓ **Validity:** The certificate is valid for a period of 12 months from the date of issue [Section 69(3)(a)].
- ✓ **Conditions of Issue:** It may be issued subject to conditions in respect to (i) the nature of work in which a young person may be employed, or (ii) the re-examination of such young person before the expiry of 12 months. [Section 69(3)(b)]. Such young person shall not be required or allowed to work except in accordance with these conditions. [Section 69(6)]
- ✓ **Revocation of the certificate:** The certificate can be revoked by the certifying surgeon, at any time if, in his opinion, the worker is no longer fit to work as such in the factory. [Section 69(4)]
- ✓ **Certifying Surgeon to state reasons for refusal or revocation:** Where a Certifying Surgeon refuses to grant or renew a certificate or revokes a certificate he shall state his reasons in writing if requested by any person, for doing so. [Section 69(5)]
- ✓ **Fee for the certificate:** Any fee payable for a certificate shall be paid by the occupier and it cannot be recovered from the young person, his parents, or guardian. [Section 69(7)]

(iv) Effect of certificate of fitness granted to adolescents

(1) The effect of granting a certificate of fitness to an adolescent and who while at work in a factory carries a token giving reference to such certificate is that he is deemed to be an adult for the purpose of Chapter VI relating to working hours, and Chapter VIII relating to annual leave with wages. [Section 70(1)]

(2) No female adolescent or a male adolescent who has not attained the age of seventeen years but who has been granted a certificate of fitness to work in a factory as an adult, shall be required or allowed to work in any factory except between 6 a.m. and 7 p.m.

Provided that the State Government may by notification in the Official Gazette, in respect of any factory or group or class or description of factories:

- ✓ vary the limits laid down in this sub-section, so, however, that no such section shall authorise the employment of any female adolescent between 10 p.m. and 5 a.m.
- ✓ grant exemption from the provisions of this sub-section in case of serious emergency where national interest is involved. (Section 70 IA)

(3) Where an adolescent has not been granted this certificate, he shall notwithstanding his age, be deemed to be a child for all the purposes of this Act. [Section 70(2)]

(v) Penalty for using false certificate of fitness

If a certificate of fitness is granted to any person, no other person can use it or attempt to use it. The person granting the certificate cannot allow its use or attempt to be used by another person. In other words, where a person knowingly uses or attempts to use a false certificate and thus,

contravenes above provisions, can be punished with imprisonment extending up to two months or with fine up to Rs. 1000 or with both. (Section 98)

Working hours for children

Section 71, lays down further restrictions on the employment of children in the factories. These restrictions as stated below relate to working hours for children.

- (1) A child shall not be employed or permitted to work for more than 4-1/2 hours in any day. [Section 71(1)(a)]
- (2) He is not permitted to work during night, i.e., during a period of at least 12 consecutive hours, including intervals, between 10 p.m. and 6 a.m.
- (3) The period of work shall be limited to two shifts only. [Section 71(2)]
- (4) These shifts shall not overlap.
- (5) Shifts should not spreadover more than 5 hours each.
- (6) Each child shall be employed in only one of the relays.
- (7) The relays should not be changed more frequently than once in a period of 30 days, otherwise previous permission of the Chief Inspector should be sought in writing.
- (8) The provision relating to weekly holiday under Section 52, also apply to child workers. But Section 7(3) does not permit any exemption in respect of these provisions.
- (9) No child shall be required or allowed to work in any factory on any day on which he has already been working in another factory. [Section 71(4)]
- (10) No female child shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m.

The Act not only prohibits the double employment of a child by the occupier or manager, but also prohibits under Section 99 his parent or guardian or person having custody of or control over him or obtaining any direct benefit from his wages, from allowing him to go for double employment. If they contravene this provision, they can be punished with a fine extending up to one thousand rupees unless the child works without the consent or connivance of his parent or guardian or such other person.

Notice of periods of work for children

- (1) A notice, showing clearly for every day the period during which children may be required or allowed to work, shall be displayed and correctly maintained as per Section 108(2) in every factory which employs children.
- (2) The periods of work shall be fixed beforehand according to the method prescribed for adult workers under Section 61.

(3) The periods of work so fixed shall not contravene the provisions of Section 71 relating to working hours for children. [Section 72(2)]

(4) The provisions of sub-sections (8), (9) and (10) of Section 61 shall apply to such a notice. (Section 72)

Register of child workers

According to Section 73(1), in every factory, in which children are employed, a register of child workers should be maintained and should be available for inspection by the inspector at all times during working hours or when any work is being carried on in the factory.

Hours of work to correspond with notice under Section 72 and register under Section 73

According to Section 74, the employment of any child shall be in accordance with the notice of periods of work for children to be displayed under Section 72 and the entries made beforehand against his name in the register of child workers of the factory maintained under Section 73.

Power to require medical examination

Section 75 empowers the inspector to serve on the manager of a factory, a notice requiring medical examination of a person by a surgeon, if in his opinion, such person is a young person and is working without a certificate of fitness or, such person, though in possession of certificate of fitness, is no longer fit to work in the capacity stated therein.

The inspector may further direct that such person shall not be employed or permitted to work in any factory until he has been examined and also granted a certificate of fitness or fresh certificate of fitness or has been certified by the Certifying Surgeon not to be a young person.

Certain other provisions of law not barred

The provisions relating to the employment of young persons in factories shall be in addition to, and not in derogation of the provisions of the Employment of Children Act, 1938. (Section 77)

1.12. Annual Leave With Wages

This aspect has been dealt with under Chapter VIII of the Act.

Application of the Chapter

(1) According to Section 78(1), the provisions contained in this chapter shall not operate to the prejudice of any right to which a worker may be entitled under any other law or under the terms of any award, agreement including settlement or contract of service.

(2) Where such award, agreement including settlement or contract of service provides for a longer annual leave with wages than provided in this Chapter, the worker shall be entitled to such longer annual leave but if those provisions are less favorable, then this Chapter shall apply [proviso to Section 78(1)].

(3)The provisions of this chapter do not apply to workers in any factory of any railway administration by the Government, who are governed by leave rules approved by the Central Government.

Annual leave with wages

Under Section 79, the following provisions have been made with regard to annual leave with wages.

Basis of leave

(a) According to Section 79(1), where a worker has worked for a minimum period of 240 days or more in a factory during any calendar year, i.e., the year beginning from 1st January, he is entitled to leave with wages on the following basis-

- ✓ for adults - One day for every 20 days of work performed by them during the previous calendar year.
- ✓ for children - One day for every fifteen days of work performed by him during the previous calendar year.

(b) If a worker does not commence his services from 1st January, he is entitled to these leaves at the above mentioned rates provided he has worked for 2/3rd of the total number of days in the remaining part of the calendar year.

(c) These leaves are exclusive of all holidays whether occurring during or at either end of the period of leave.

(d) In calculating leave, fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be ignored.

(e) Computation of qualifying period of 240 days: For the purpose of calculating the minimum period, following periods are also included:

- ✓ any days of lay-off as agreed or as permissible under the Standing Orders.
- ✓ for female workers, period of maternity leave not exceeding 12 weeks.
- ✓ leave earned in the year prior to that in which the leave is enjoyed.

Though the above mentioned days included in calculated the qualifying period, but the worker will not be entitled to earn leave for these days.

A worker who is discharged or dismissed from service or quits his employment or is superannuated or dies while in service during the course of calendar year, he or his heir or nominee as the case may be, shall be entitled to wages in lieu of the quantum of leave to which he was entitled immediately before his discharge, dismissal, quitting of employment, superannuation or death, calculated at the rates specified in sub-section (1), even if he had not worked for the entire period specified in sub-section (1) or (2) making him eligible to avail of such leave and such payment shall be made:

- ✓ where the worker is discharged or dismissed or quits employment, before the expiry of second working day from the date of such discharge, dismissal or quitting;
- ✓ where the worker is superannuated or dies while in service, before the expiry of two months from the date of such superannuation or death. [Explanation to Section 79(1)]

Accumulation or carry forward of leaves

If any worker does not avail any earned leave entitled to him during the calendar year, it can be carried forward to the next calendar year subject to the maximum of 30 days for an adult worker and 40 days for a child worker.

But if a worker applies for leave with wages and is not granted such leave in accordance with any approved scheme under Sections 79(8) and (9), or in contravention of Section 79(10), he can carry forward the leave refused, without any limit. [Section 79(5)]

How to apply for leave with wages

- ✓ If a worker wants to avail leave with wages earned by him during the year, he must apply in writing, to the manager of the factory at least 15 days before the date on which he wishes to go on leave. [Section 79(6)]
- ✓ In case a worker is employed in a public utility service as defined in Section 2(n) of the Industrial Disputes Act, 1947, the application for leave with wages shall be made at least 30 days in advance.
- ✓ The annual leave with wages cannot be availed for more than three times during any year.
- ✓ The application to avail annual leave with wages for illness purposes can be made at any time. [Section 79(7)]
- ✓ An application for leave which does not contravene the provisions of Section 79(6) shall not be refused unless the refusal is in accordance with the scheme for the time being in operation under sub-sections (8) and (9) of Section 79. [Section 79(10)]

Scheme of leave

To ensure continuity of work, the grant of leave can be regulated. For this purpose, the occupier or the manager should prepare a scheme in writing, regulating the grant of leave to the workers and lodge it with the Chief Inspector.

The Scheme should be prepared in agreement with the following bodies or persons:

- ✓ Works Committee formed under Section 3 of the Industrial Disputes Act, 1947, or
- ✓ Such other Committee formed under any other Act, or
- ✓ In the absence of any of the above Committee, the representatives of the workers chosen in the prescribed manner [Section 79(8)].

(b) The scheme shall be valid for 12 months from the date on which it comes into force. It can be renewed, with or without modification, for a further period of 12 months [Section 79(9)].

A notice of renewal shall be sent to the Chief Inspector.

(c) The Scheme shall be displayed at some conspicuous and convenient places in the factory. [Section 79(9)]

Wages during leave period

According to Section 80(1), for the leave allowed to a worker under Section 78 or 79, he shall be entitled to wages at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the month immediately preceding his leave. Such full time earning will also include the dearness allowance and cash equivalent of the advantage accruing through the concessional sale to the workers of food grains and other articles. But will exclude any overtime wages and bonus.

Provided that in the case of a worker who has not worked on any day during the calendar month immediately preceding his leave, he shall be paid at a rate equal to the daily average of his total full time earnings for the days on which he actually worked during the last calendar month preceding his leave, in which he actually worked, exclusive of any overtime and bonus but inclusive of dearness allowance and the cash equivalent of the advantage accruing through the concessional sale to the workers of food grains and other articles.

The cash equivalent of the advantage accruing through the concessional sale to the workers of food grains and other articles shall be computed as often as may be prescribed, on the basis of the maximum quantity of food grains and other articles admissible to a standard family. [Section 80(2)]

“Standard family” means a family consisting of a worker, his/her spouse and two children below the age of 14 years requiring in all three adult consumption units. [Expl. I to Section 80(2)]

“Adult consumption unit” means the consumption unit of a male above the age of 14 years, and the consumption unit of a female above the age of 14 years, and that of a child below the age of 14 years, shall be calculated at the rates of 0.8 and 0.6 respectively of one adult consumption unit. [Expl. II to Section 80(2)]

Payment in advance in certain cases

Section 81 provides that where an adult worker has been allowed leave for not less than 4 days and a child worker for not less than 5 days, wages due for the leave period should be paid in advance, i.e., before his leave begins.

Mode of recovery of unpaid wages

Any unpaid wages due to the workers under this Chapter, can be recovered as delayed wages under the provisions of the Payment of Wages Act, 1936. (Section 82)

1.13. Penalties And Procedures

(1) General penalties for offences: If there is any contravention of any of the provisions of this Act or any rules or order made thereunder, the occupier and manager shall each be guilty of an offence and punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs. one lakh or with both and if the contravention is continued after conviction, with a further fine of Rs. one thousand for each, day till contravention continues.

The provisions of Section 92 further provides penalty for contravention of any of the provisions of Chapter IV or any rule made thereunder or under Section 87 which has resulted in an accident causing death or serious bodily injury, the fine shall not be less than Rs. 25,000 in the case of an accident causing death and Rs. 5,000 in case of serious bodily injury. Explanation to this Section defines serious bodily injury, which involves the permanent loss of the use of or permanent injury to any limb or sight or hearing or the fracture of any bone excluding the fracture (not being fracture of more than one) bone or joint of any phalanges of the hand or foot.

Section 94 stipulates for enhanced penalty for any person who has already been convicted under Section 92 of the Act, and is again guilty of an offence involving contravention of the same provisions. Punishment for subsequent conviction includes imprisonment for a term which may extend to three years or with fine which may not be less than Rs. 10,000 but which may extend to Rs. two lakhs or with both. Provided that the Court may, for any adequate and special reasons to be mentioned in the judgment impose a fine of less than Rs. 10,000. Provided further, that where contravention of any of the provisions of Chapter IV or any rule made thereunder or under Section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than Rs. 35,000 in case of death and Rs. 10,000 in the case of an accident causing serious bodily injury.

No cognizance shall be taken of any conviction made more than two years before the commission of the offence for which the person is subsequently convicted.

(2) Liabilities of owner of premises in certain circumstances: Section 93 provides that where in any premises separate building are being leased out by the owner to different occupiers for use as separate factories, the owner of the premises shall be responsible for the provision and maintenance of common facilities and services such as approach roads, drainage, water-supply, lighting and sanitation. [Section 93(1)]

Where in any premises, independent floors or flats are leased to different occupiers for use as separate factories, the owner shall be liable as if he were the manager or occupier of a factory for any contravention of the provisions of this Act in respect of (i) latrines, urinals, washing facilities and common supply of water for this purpose; (ii) fencing of machinery and plant belonging to the owner and not entrusted to the custody or use of an occupier; (iii) safe means of access to floors or flats and maintenance and cleanliness of staircase and common passages; (iv) precautions in case of fire; (v) maintenance of hoists and lifts; and (vi) maintenance of any other common facilities provided in the premises. [Section 93(3)]

But the liability of the owner [under Section 93(3)] arises only wherein any premises, independent rooms with common latrine, urinals and washing facilities are leased to different occupiers for use

as separate factories so that the owner should also comply with the provisions of maintaining such facilities. (Section 93(5))

For the purposes of sub-sections (5) and (7) computing the total number of workers employed, the whole of the premises shall be deemed to be single factory. [Section 93(3)]

The owner is liable for contravention of Chapter III except Sections 14 and 15; Chapter IV except Sections 22, 23, 27, 34, 35 and 36 where in any premises, portions of a room or a shed leased out to different occupiers for use as separate factories: Provided that in respect of the provisions of Sections 21, 24 and 32, the owners liability shall be only in so far as such provisions relate to things under his control and the occupier shall be responsible for complying with the provisions of Chapter IV in respect of plant and machinery belonging to or supplied by him and for contravention of Section 42.

The Chief Inspector has been empowered to issue orders to the owners in respect of the carrying out of the provisions as mentioned above but subject to the control of the State Government.

(3) Penalty for obstructing Inspector: Section 95 lays down penalty of imprisonment for six months or fine of Rs. 10,000 or with both for willfully obstructing an inspector in the exercise of any power conferred on him by or under this Act or fails to produce any registers or other documents to him on demand or concealing or preventing any worker from appearing before or being examined by an Inspector.

(4) Penalty for wrongfully disclosing of results of analysis under Section 91: Section 96 provides imprisonment extending up to a term of six months and fine up to Rs. 10,000 or both for the wrongful disclosure of results of analysts of the analysis done under Section 91 of the Act.

(4A) Penalty for contravention of Sections 41B, 41C and 41H: Section 96A provides punishment of 7 years imprisonment or fine which may extend to Rs. two lakhs for the non-compliance with or contravention of any of

the provisions of Section 41B, 41C, or 41H or rules made thereunder by any person. In case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. If such failure, contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to ten years.

(5) Offences by workers and penalties therefor:

✓ Section 97 lays down that if any worker contravenes the provision of this Act or any rules or orders made thereunder imposing any duty or liability on workers he will be punishable with fine which may extend to Rs. 500/-

✓ Section 98 imposes penalty for using false certificate of fitness. Such punishment involves imprisonment for such a term which may not extend to two months or with fine which may extend to Rs. 1,000/- or with both.

(6) Penalty for permitting double employment of child by parents or guardians is stipulated under Section 99. Such an act is punishable with fine extending up to Rs. 1,000 unless it appears to the Court that the child so worked without consent and connivance of such parents, guardian or person.

(7) Onus of providing limits of what is practicable etc.: Onus of proving is on the person who is alleged to have failed to comply with such duty etc. to prove that he has taken all measures or it was not reasonable practicable. (Section 104A)

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